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Mr. Thomas Dorman, Executive Director  
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211 Sower Blvd.  
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**RE: In The Matter Of:**

**THE JOINT APPLICATION OF E. ON AG, )  
POWERGEN PLC, LG&E ENERGY CORP.) Case No. 2001-104  
KENTUCKY UTILITIES COMPANY FOR )  
APPROVAL OF AN ACQUISITION )**

RECEIVED  
JUL 20 2001  
PUBLIC SERVICE  
COMMISSION

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the originals and ten (10) copies of the **POST HEARING BRIEF** on behalf of Metro Human Needs Alliance (MHNA) and People Organized and Working for Energy Reform (POWER).

I am mailing a copy of this letter and motion to all parties of record.

Very truly yours,

Carol Markovitz Raskin

Enclosures

CMR/omc

cc: Parties of Record



Kentucky Counties served:  
Breckinridge, Bullitt, Grayson,  
Hardin, Henry, Jefferson, Larue,  
Marion, Meade, Nelson, Oldham,  
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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

JUL 20 2001

PUBLIC SERVICE  
COMMISSION

**In The Matter Of:**

<b>Joint Application of E.ON AG, Powergen PLC,</b>	<b>)</b>	
<b>LG&amp;E Energy Corp., Louisville Gas and Electric</b>	<b>)</b>	<b>Case No. 2001-104</b>
<b>Company and Kentucky Utilities Company for</b>	<b>)</b>	
<b>Approval of an Acquisition</b>	<b>)</b>	

**POST HEARING BRIEF ON BEHALF OF  
METRO HUMAN NEEDS ALLIANCE AND POWER**

Comes now, METRO HUMAN NEEDS ALLIANCE (MHNA) AND POWER, by counsel, and for its post hearing brief states as follows:

Once again LG&E Energy Corp., Louisville Gas and Electric Company and Kentucky Utilities Company (collectively hereafter, "LG&E") are applying for a change in ownership, this time to become a part of the second largest utility company in the world. This is not necessarily a good thing for the ratepayers of Kentucky.

The Commission will have to look long and hard to find any public benefit for ratepayers or even the Commonwealth as a result of this acquisition. E.ON is relying on the various commitments Powergen made last year as the basis for meeting the statutory standard that this proposed acquisition is in the public interest. Each acquisition must stand on its own merit. While the commitments made by Powergen must be maintained in the public interest, they are not enough to underlie a new acquisition.

In its testimony, E.ON refused to extend any of the commitments previously made by Powergen last year as part of its effort to secure this Commission's approval of that acquisition. E.ON refused to extend by what would be at most two and more likely one year, the Powergen commitment to maintain the LG&E headquarters in Louisville.

Dr. Schipporeit testified that the Company, based on its roots, has a strong sense of social responsibility and that based on its tradition feels a strong obligation "to the social problems of this community." Tr. I, p. 60, Lines 15-20, p. 63, Lines 19-22. Powergen's commitment to review with LG&E management its current policies and practices with respect to low income customers to determine whether policies and practices more sympathetic to the needs of such customers should now become E.ON's commitment.

However, E.ON has no experience in developing and delivering services that specifically address the needs of the low-income customer segment and is unaware of the apparently vast difference between our social service system and Germany's. (See Testimony of Dr. Schipporeit, Tr. I, p. 63, Lines 5-14.) Therefore E.ON top management should be required to meet regularly with the low-income Intervenor, so that the lines of communication are strengthened and general policy issues impacting low-income customers can be explored. E.ON should also be required to continue the regular discussions that have taken place between LG&E and MHNA and other low-income advocates.

The Attorney General and various Intervenor asked E.ON about the commitment incorporated in the Commission's Order in Case No. 2000-95, to discuss with the Commission any savings from future utility acquisitions elsewhere "that should be appropriately shared with Kentucky ratepayers. At some points Dr. Schipporeit appeared to commit E.ON to "to share potential savings...." Id. Lines 14-15 and p. 83, Lines 9-17. At another time, however, Dr. Schipporeit stated that E.ON is committing only to discuss the matter with the Commission, and not even "to inform" the Commission of synergies and sharing potential from a future acquisition. He refused to agree to make a formal filing with the Commission, setting forth an analysis of merger synergies and a methodology for sharing with Kentucky ratepayers. Tr. I, pp. 81, line 5- 83, line 8. Dr. Schipporeit did say that E.ON would have "no problem" including the Kentucky Attorney General and interested ratepayer parties in these future discussions. Tr. I, p. 57, Lines 6-10.

The Commission should require that E.ON make a formal filing so that it may decide about sharing these future returns to the ratepayers.

The Attorney General asked Dr. Schipporeit about his views on agreeing to a provision that would provide Kentucky ratepayers with the same benefits that might be accorded rate payers as a result of any future United States' utility acquisitions outside Kentucky (a "most-favored nation clause). He refused to agree to such a provision, denying ratepayers any tangible benefits that might ensue as a result of LG&E providing E.ON with its foothold in the US utility business. See Tr. I, pp. 42-44. The Commission should require E.ON to make a formal filing with respect to benefits accorded rate payers in subsequent acquisitions, with a discussion of what would be appropriate to provide Kentucky ratepayers, or why it would be inappropriate to provide them with similar benefits.

As recently as five years ago, the customers of LG&E were the sole focus of a locally-owned company and practically its sole source of revenue. These ties of customers and utility management contributed strongly to the ability of the utility to meet local needs. The merger with Kentucky Utilities did not remove the center of authority from Louisville. While the Powergen acquisition was a giant step away from local ownership and its benefits, the proposed acquisition will be a quantum leap, resulting in an awkward three-tier structure that endangers this communality.

Only a year ago Powergen promised that if permitted to purchase the company it would not only make improvements based on its world-wide expertise, but also use the company as its base to expand in the United States. We are now seeing the results of its first promise, which has resulted or will this year in a 20% reduction in its experienced work force. See Testimony of Mr. Snowberger, Vol. I, p 164. "Back fill" and replacement with contract labor will not change this significantly. However this does not make up for the loss of skilled employment

for Kentuckians, nor does it alleviate the concerns raised for safety and reliability.

This major reduction in the work force was a part of the result of the reports developed by the various "Value Delivery" Teams. There are many other proposals in these reports that raise serious concerns about future service. Some of these are the possible outplacement and reduction of meter reading. The possible sale of the meter reading franchise to communication companies, alarm companies and cable customers would be like opening the door to the Trojan Horse. See Supplemental Response dated June 6, 2001 to Commission Staff's first Data Request 19 (h), Tab 6, p.21 and Response to Staff Hearing Requests 4-13. The Commission should address the various concerns raised and monitor customer security as well as service issues very carefully.

The Commission should continue to address service and safety concerns, not only by requiring periodic reports, but also by requiring the establishment of tangible benchmarks for customer service that include benchmarks for concerns of particular interest to low-income ratepayers. In conjunction with this, the Commission should require annual customer service evaluations by an independent evaluator to insure high quality service for all customers. Such a survey should address issues of particular concern to low-income customers and should include the collection of data such as suggested by Mr. Burch in his prefiled testimony. (Prefiled testimony, pp. 7-8.) Some of that data, such as usage, number of late payments, number of disconnections, arrearage amounts and history, might be able to be collected by the Company's new computer customer information system, described by Mr. Gallagher. The Commission should make these reports and survey results available to the Attorney General and to interested intervenors.

Powergen turned out not to have the money for further acquisitions in the United States, even after divesting itself of a number of investments. Now E.ON is

asking to step into Powergen's shoes, through its proposed purchase of Powergen, lock, stock and barrel. E.ON appears to have more than ample cash to buy whatever it wants. If this merger is approved, it should contain not only the commitments required last year of Powergen, which are a given and are no new benefit to the ratepayers or the Commonwealth, but additional commitments which do provide additional benefits to the ratepayers.

If the E.ON purchase is consummated, LG&E ratepayers will become a very small part of a very large empire, and its part will get smaller if E.ON carries out its stated intentions to acquire other utilities in the United States. Moreover, under the structure devised for this acquisition, the management of LG&E will lie with a company that is not subject to the Public Utility Holding Company Act and is not in the direct corporate chain from E.ON to LG&E. It is very important to the low-income customers of LG&E, and indeed to all its customers, that they receive benefits from this proposed transaction and that they do not lose by becoming a small part of a giant machine.

Gas and electricity service are essential. Utility service needs to be accessible to all households including customers whose incomes now make it difficult for them to maintain such service on an uninterrupted basis. As a condition of approval of this acquisition, the Commission should require that the company develop a customer service plan for its entire residential base. It should include specific provisions to enable all residents access to uninterrupted utility service. New programs and policies as well as expansion of existing programs to help qualified low-income and elderly customers on fixed incomes meet their utility bills should be developed in collaboration with low-income customer representatives and advocacy groups. This will lead to better service and fewer disconnections for a significant portion of the customer base, providing a concrete public benefit to the ratepayers and the state.

The applicants must provide new benefits to the ratepayers and the state. They did not quantify the only potential benefit to ratepayers, lower interest rates, so there is no way to judge its meaningfulness. The possibility that this acquisition would be a pipeline for other German companies to move here is too indefinite to count.

E.ON must bring new value to the ratepayers for this acquisition. The ratepayers are not only the essential beneficiaries, as well as those who provide the income that makes this purchase a good deal, but also provided the funds to build the plant now sought by E.ON. Therefore E.ON should be required to share with the ratepayers the benefits of any future U.S. utility acquisitions, both from synergies and by providing to Kentucky ratepayers any benefits provided utility customers in its subsequent acquisitions.

A major reduction in utility terminations enhances the well-being of the entire population, providing a significant public benefit. It will have a major impact in improving the quality of life for the many children and elderly who are disproportionately affected by interruptions in service.

WHEREFORE, as a condition of the acquisition, if approved, the Commission should, in addition to incorporating all of Powergen's commitments, require that:

1. E.ON's top management meet regularly with the low-income Intervenor to discuss areas of concern;
2. E.ON continue the regular discussions between LG&E and MHNA and POWER and other low-income advocates to resolve issues affecting low-income customers;
3. E.ON develop a customer service plan for its entire residential base. This should include programs and policies, new and existing, to help qualified low-income and elderly customers on fixed incomes meet their utility bills which

- should be developed in collaboration with low-income customer representatives and advocacy groups;
4. E.ON develop customer service benchmarks and commission an annual customer service evaluation from an independent evaluator, and include issues of particular concern to low-income ratepayers;
  5. E.ON make a formal filing with the Commission, setting forth an analysis of synergies envisioned in future United States utility acquisitions and include a proposed methodology for sharing with Kentucky ratepayers, with notice to the Attorney General and Intervenors, so the Commission can determine the appropriate amount and method of sharing for Kentucky ratepayers;
  6. E.ON make a formal filing with respect to benefits accorded ratepayers in subsequent acquisitions, with a discussion of what would be appropriate to provide Kentucky ratepayers, or why it would be inappropriate to provide them with similar benefits, with notice to the Attorney General and Intervenors, so the Commission can determine whether or not it is appropriate to provide such benefits to Kentucky ratepayers;
  7. E.ON provide a copy of its filing with the Commission with respect to the merger surcredit for years six through ten following the LG&E - KU merger in 1998 to the Attorney General and the Intervenors in that case;
  8. E.ON include the Attorney General and the Intervenors in the proceedings when it updates the Commission on the adoption and implementation of best practices.

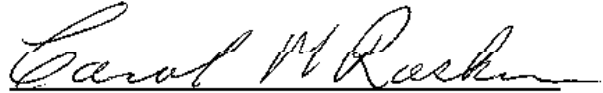
Respectfully submitted,



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Attorney for **METRO HUMAN NEEDS  
ALLIANCE and POWER**

**CERTIFICATE OF SERVICE**

I hereby certify that the original and ten (10) copies have been filed with the Kentucky Public Service Commission and that a copy thereof has been served on Kendrick Riggs, Ogden Newell and Welch, 1700 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, by mailing a true and correct copy thereof, postage prepaid, and a copy mailed to the parties listed on the attached, this 20<sup>th</sup> day of July, 2001.

A handwritten signature in cursive script, reading "Carol M. Raskin", written in black ink.

Carol Markovitz Raskin  
Legal Aid Society, Inc.  
425 W. Muhammad Ali Blvd.  
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ALLIANCE and POWER**